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January 29, 2007

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Re: **Berry's Creek Study Area**

Dear Mr. Tomchuk and Mr. Monroe:

I am writing this letter on behalf of Arsynco, Inc. ("Arsynco"), which the U.S. Environmental Protection Agency ("EPA") has named as a Category A and B potentially responsible party ("PRP") in connection with the Berry's Creek Study Area.

Arsynco has asked me to write this letter for two reasons. First, Arsynco wants to bring to EPA's attention certain factual errors in the Agency's description of Arsynco and its operations in the documents that EPA has prepared concerning Berry's Creek, including the draft administrative order on consent and settlement agreement to perform a Remedial Investigation/Feasibility Study ("RI/FS") for the Berry's Creek Study Area included with your most recent letter. Second, Arsynco would like to understand why it is named as a Category "A" PRP when the prior owner of its property, BASF Corporation, is not. BASF owned the property from 1961 to 1969, manufacturing chemicals at a time when there were little or no environmental regulations.



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1. Errors in EPA's Descriptions of Arsynco's Operations

EPA's draft administrative order contains the following description of Arsynco:

Arsynco, Inc. manufactured organic chemicals along Berry's Creek, beginning in 1905. Tidal flows from Berry's Creek washed contamination from on-site ditches and an on-site pond into Berry's Creek. Storm water run-off channels drained directly into Berry's Creek. A 1977 report states that repeated chemical spills from the facility ran into Berry's Creek.

Arsynco only came into existence in July 1969 (not 1905). At the time, it bought property located at the Foot of 13th Street in Carlstadt, New Jersey (the "Carlstadt Property") from Inmont Corporation (now known as BASF). BASF had owned the Carlstadt Property since 1961 and conducted chemical manufacturing on the site during its ownership. Previously, the Carlstadt Property was owned by Fries Brothers.

The Carlstadt Property is not located "along Berry's Creek." There are two tracts to the Carlstadt Property. Tract 1 is the upland tract where manufacturing operations were located prior to 1993, when all manufacturing operations ceased. Tract 2, which was never used for manufacturing, and remains undeveloped, contains manmade drainage ditches which have historically and continue to receive industrial and regional discharges from many sources, including sources other than the Carlstadt Property. The ditches on Tract 2 would be considered an unnamed tributary of Nevertouch Creek. This unnamed tributary originates far upgradient to the west and north of the Carlstadt Property, pass along the border of Tract 1 and through Tract 2 of the Carlstadt Property and extend from the Carlstadt Property via underground piping for about a quarter mile before it reaches Nevertouch Creek. Nevertouch Creek eventually flows into Berry's Creek.

EPA refers to tidal flows from Berry's Creek as potentially washing contamination from an "on-site pond" and "on-site ditches" into Berry's Creek. The pond that was located on the east side of Tract 1 received discharges of process wastewater (i.e. - contact water) from the site and was operated throughout BASF's ownership (1961-1969). However, this pond was closed down, filled and sealed within a year or so after Arsynco's acquisition of the Carlstadt Property. Also, from the beginning of Arsynco's ownership, any potentially contaminated wastewater from its operations was collected in a lined effluent treatment basin where the wastewater underwent

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numerous levels of treatment to remove hazardous substances. The treated wastewater was sent to the publicly owned treatment works. Later, in its history, Arsynco obtained an NJPDES permit authorizing it to discharge only non-contact cooling water to the onsite ditches to the unnamed tributary. This NJPDES discharge was from a second on-site pond located on the west side of Tract 1 that was used only for non-contact cooling water, and discharges from this pond were monitored by Arsynco under their NJPDES permit. The non-contact cooling water pond was closed and filled in during 1994. Incoming tidal flows did not come directly from Berry's Creek but from Nevertouch Creek, and those tidal flows may have carried contamination from neighboring properties onto the Carlstadt Property. The outgoing tidal flows did not discharge directly in Berry's Creek, but into Nevertouch Creek. Similarly, storm water run-off channels did not discharge directly into Berry's Creek.

EPA refers to a 1977 report stating that repeated chemical spills ran from the Arsynco facility into Berry's Creek. Arsynco is not aware of such a report and would appreciate seeing a copy in order to respond.

Moreover, EPA's description does not include information about recent events about the property. Arsynco ceased operations in 1993, and the Carlstadt Property has been undergoing investigation and remediation pursuant to the New Jersey Industrial Site Recovery Act. The New Jersey Department of Environmental Protection ("NJDEP") has recently issued a partial, conditional approval of Arsynco's Remedial Action Workplan.

Based on this corrected information, Arsynco does not understand why it was named as a Category A PRP, other than the fact that it was named as a defendant in the abortive lawsuit that Morton and Velsicol began with respect to Berry's Creek in 1996. Also, Arsynco does not understand why it has been named as a Category B PRP as well. It is not aware of having sent mercury (which was not generally used by Arsynco) to the Ventron/Velsicol site. Arsynco has never been involved with the PRP Group relating to that site. Could EPA explain the basis for including Arsynco as a Category B PRP?

2. BASF's Ownership of the Site and Its Operations

While Arsynco disputes that Arsynco has ever contributed to the contamination of Berry's Creek, it is much more likely that BASF's operations at the Carlstadt Property contributed to that contamination than Arsynco's. Yet BASF has not yet been made as a Category A PRP.

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As mentioned before, Inmont, BASF's predecessor, owned the Carlstadt Property from 1961 to 1969. Throughout Inmont's ownership, Inmont actively discharged untreated process wastewaters from its chemical manufacturing operations directly to the on-site pond, which in turn discharged to the ditches on Tract 2, and from there flowed into Nevertouch Creek.

Thus, to the extent that EPA believes that pollutants migrated from the Carlstadt Property to Berry's Creek, it is more likely that these materials originated from Inmont's operations, than from Arsynco's, and BASF, Inmont's successor, should be held accountable.

Accordingly, Arsynco requests that EPA remove Arsynco from the "A" category, explain the basis of listing Arsynco as a category "B" PRP and designate BASF as a Category "A" party as well as a Category "B" and "C" party.

Sincerely,

A handwritten signature in cursive script, reading "David B. Hird".

David B. Hird